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10 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 F. G. CROSTHWAITE, et al., as Trustees of
12 the OPERATING ENGINEERS' HEALTH
AND WELFARE TRUST FUND, et al.,

13 Plaintiffs,

14 v.

15 JWT GENERAL ENGINEERING, INC., a
16 California Corporation, aka/dba
PERFORMANCE COMPACTION aka
17 PERFORMANCE COMPACTION RENTALS;
and BART KENNON JONES, an Individual,

18 Defendants.
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Case No.: C09-5198 SI

**NOTICE AND ACKNOWLEDGMENT
and JUDGMENT PURSUANT TO
STIPULATION**

20 IT IS HEREBY STIPULATED by and between the parties hereto, that Judgment may be
21 entered in the within action in favor of the Plaintiff OPERATING ENGINEERS HEALTH AND
22 WELFARE TRUST FUND, et al. (collectively "Plaintiffs" or "Trust Funds") and against
23 Defendants JWT GENERAL ENGINEERING, INC., a California Corporation, aka/dba
24 PERFORMANCE COMPACTION aka PERFORMANCE COMPACTION RENTALS; and
25 BART KENNON JONES, an Individual; and/or alter egos and/or successor entities,
26 ("Defendants"), as follows:

27 1. Defendants entered into valid Collective Bargaining Agreements with the
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1 Operating Engineers Local 3 Trust Funds (hereinafter "Bargaining Agreements"). These
 2 Bargaining Agreement has continued in full force and effect to the present time.

3 2. Bart Kennon Jones, Owner/President/Officer of Defendants JWT General
 4 Engineering, Inc. and Performance Compaction aka Performance Compaction Rentals, hereby
 5 acknowledges that he is authorized to receive service and has received the following documents in
 6 this action: Summons; Complaint; Dispute Resolution Procedures in the Northern District of
 7 California; Order Setting Initial Case Management Conference and ADR Deadlines; Notification
 8 of Case Management Conference; Case Management Conference Order; Judge Illston's Standing
 9 Order; Standing Order for All Judges of the Northern District of California; Instructions for
 10 Completion of ADR Forms Regarding Selection of an ADR Process; Stipulation and [Proposed
 11 Order] Selecting ADR Process; Notice of Need for ADR Phone Conference; ADR Certification by
 12 Parties and Counsel; ECF Registration Information Handout; Welcome to the U.S. District Court,
 13 San Francisco; Certification of Interested Entities or Persons Pursuant to Civil Local Rule 3-16;
 14 and Declination to Proceed Before a Magistrate Judge and Request for Reassignment to a United
 15 States District Judge; and Reassignment Order.

16 3. Defendants have become indebted to the Trust Funds as follows:

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12/08-4/09 Liquidated Damages		\$26,684.52
1/09-4/09 Interest		\$3,204.98
1/09 Contribution Shortage (NCA Short Form Agreement)		\$2,598.20
5/09 Contribution Balance	\$39,000.57	
Liquidated Damages	\$5,995.53	
12% p/a Interest (6/25/09-11/1809)	\$440.14	
		\$45,436.24
6/09 Contribution Balance	\$29,064.35	
12% p/a Interest (6/25/09-11/1809)	\$771.78	
		\$29,836.13
7/09 Contributions	\$61,188.34	
Liquidated Damages	\$7,969.05	
12% p/a Interest (6/25/09-11/1809)	\$1,153.18	
		\$70,310.57
8/09 Contributions	\$41,702.79	
Liquidated Damages	\$5,241.65	
12% p/a Interest (6/25/09-11/1809)	\$419.18	
		\$47,363.62
9/09 Contributions	\$48,014.40	
Liquidated Damages	\$6,369.17	
12% p/a Interest (6/25/09-11/1809)	\$65.33	
		\$54,448.90
10/09 Contribution balance		\$25,026.78
Attorneys' Fees (6/24/09-11/17/09)		\$3,021.50
Costs of Suit		\$350.00
TOTAL		\$308,281.41

4. Defendant shall *conditionally* pay the amount of **\$281,596.89**, representing all of the above amounts, less conditionally waived liquidated damages of \$26,684.52. *This waiver is expressly conditioned upon the Trustees approval upon timely compliance with all of the terms of this Stipulation*, as follows:

(a) On or before December 30, 2009, and no later than the 30th day of each month thereafter (with the exception of February, which will be the last calendar day of the month) for a period of fifteen (15) months, through and including February 28, 2011, Defendant shall pay to Plaintiffs:

- The amount of \$10,000.00, for the first five months (December 30, 2009 through April 30, 2010); then,

1 • Thereafter, beginning with the payment due May 30, 2010, the monthly
2 payment amount shall increase to \$25,000.00 per month for the next ten months (May 30, 2010
3 through the February 28, 2011 payment).

4 • Any other amounts due pursuant to the terms of this Judgment will be
5 paid in one lump sum payment together with the final payment on or before February 28, 2011.

6 (b) Payments may be made by joint check, to be endorsed prior to submission.
7 Defendants shall have the right to increase the monthly payments at any time and there is no
8 penalty for prepayment.

9 (c) Payments shall be applied first to unpaid interest and then to unpaid
10 principal. The unpaid principal balance shall bear interest from November 19, 2009, at the rate of
11 twelve percent (12%) per annum in accordance with the Collective Bargaining Agreements and
12 Plaintiffs' Trust Agreements.

13 (d) At the time that Defendants makes their 11th payment, Defendants may
14 submit a written request for waiver of liquidated damages directed to the Board of Trustees,
15 but sent to Saltzman and Johnson Law Corporation together with that payment. Defendants will
16 be advised as to whether or not the waiver has been granted prior to the final payment hereunder.
17 Such waiver will not be considered until and unless all other amounts are paid in full and
18 Defendants' account is current.

19 (e) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise
20 Defendants, in writing, as to the final amount due, including interest and all additional attorneys'
21 fees and costs incurred by Plaintiffs in connection with collection and allocation of the amounts
22 owed to Plaintiffs under this Stipulation regardless of whether or not Defendants default herein.
23 Any additional amounts due pursuant to the provisions hereunder shall also be paid in full with the
24 November 30, 2010 stipulated payment.

25 (f) Checks shall be made payable to the *Operating Engineers Trust Funds*, and
26 delivered to Michele R. Stafford at Saltzman & Johnson Law Corporation, 44 Montgomery Street,
27 Suite 2110, San Francisco, California 94104, or to such other address as may be specified by
28 Plaintiffs.

5. Defendants expressly agree that in the event that Defendants request a modification of the monthly payments due under the terms of this Stipulation at any time, Defendants shall immediately submit to a financial hardship audit performed by auditors of Plaintiffs choice, and Defendants agree to pay all accountant and attorneys' fees and costs associated with that audit.

6. In the event that any check is not timely submitted or fails to clear the bank, or is unable to be negotiated for any reason for which Defendants are responsible, this shall be considered to be a default on the Judgment entered. If this occurs, Plaintiffs shall make a written demand to Defendants to cure said default. If caused by a failed check, default will only be cured by the issuance of a replacement *cashier's check*, delivered to Saltzman and Johnson Law Corporation within seven (7) days of the date of the notice from Plaintiffs. If Defendants elect to cure said default, and Plaintiffs elect to accept future payments, *all such future payments shall be made by cashier's check*. In the event default is not cured, all amounts remaining due hereunder, without any waiver of liquidated damages, shall be due and payable on demand by Plaintiffs.

7. Beginning with contributions due for hours worked by Defendants' employees during the month of November 2009, due on December 15, 2009 and delinquent if not **received** by the Trust Funds by December 25, 2009, and for every month thereafter until this Judgment is satisfied, Defendants **shall remain current in contributions** due to Plaintiffs under the current Collective Bargaining Agreement and under all subsequent Collective Bargaining Agreements, if any, and the Declarations of Trust as amended. **Defendants shall fax a copy of its contribution report for each month, together with a copy of that payment check, to Michele R. Stafford at 415-882-9287, prior to sending the payment to the Trust Fund office.** To the extent that Defendants is working on a Public Works job, or any other job for which **Certified Payroll Reports** are required, copies of said Reports will be faxed to Michele R. Stafford concurrently with their submission to the general contractor, owner or other reporting agency.

8. Failure by Defendants to remain current in monthly contributions shall constitute a default of the obligations under this agreement and the provisions of ¶ 11 shall apply. Any such unpaid or late paid contributions, together with 15% liquidated damages and 12% per annum interest accrued on the combined total of contributions and liquidated damages, shall be added to

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ACKNOWLEDGMENT AND JUDGMENT PURSUANT TO STIPULATION

Case No.: C09-5198 SI

1 and become a part of this Judgment and subject to the terms herein. No waiver of liquidated
 2 damages incurred on unpaid or late paid monthly contributions herein shall apply. Plaintiffs
 3 reserve all rights available under the applicable Bargaining Agreement and Declarations of Trust
 4 of the Trust Funds for collection of current and future contributions, and for any additional past
 5 contributions not included herein as may be determined by Plaintiffs, pursuant to employee
 6 timecards or paystubs, by audit, or other means, and the provisions of this agreement are in
 7 addition thereto. Defendants specifically waive the defense of the doctrine *res judicata* as to any
 8 such additional amounts determined as due.

9 9. Defendants shall make full disclosure of all jobs on which it is working by
 10 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, name
 11 and address of job, general contractor, certified payroll if a public works job, and time period
 12 worked or to be worked. **Defendants shall fax said updated list each month together with the**
 13 **contribution report (as required by ¶ 7 of this Stipulation) to Michele R. Stafford at 415-882-**
 14 **9287.** Failure to provide this information within seven (7) days of Plaintiffs' request shall
 15 constitute a default under the terms of this agreement.

16 10. Bart Kennon Jones acknowledges that he is the Owner/President of Performance
 17 Compaction aka Performance Compaction Rentals, and an Officer of JWT General Engineering,
 18 Inc.; and Christine Margaret Jones acknowledges that she is the RMO of JWT General
 19 Engineering, Inc. (collectively "Guarantors"), and that they are personally guaranteeing all
 20 amounts to be paid in connection with this Stipulation, and acknowledge that all successors in
 21 interest to JWT General Engineering, Inc. and Performance Compaction aka Performance
 22 Compaction Rentals, as well as any assigns, affiliated entities and purchasers, shall be
 23 contractually bound by the terms of this Stipulation. This shall include any additional entities in
 24 which Bart Kennon Jones and/or Christine Margaret Jones are officers, owners or possess any
 25 ownership interest. All such entities shall specifically consent to the terms herein and to the
 26 Court's jurisdiction, in writing at the time of any assignment, affiliation or purchase.

27 11. In the event that Defendants or Guarantors fail to make any payment required under
 28 ¶ 4 above, or fails to remain current in any contributions under ¶ 7 above, then:

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ACKNOWLEDGMENT AND JUDGMENT PURSUANT TO STIPULATION

Case No.: C09-5198 SI

1 (a) The entire amount of **\$308,281.41**, plus interest, reduced by principal
 2 payments received by Plaintiffs, but increased by any unpaid contributions then due, plus 15%
 3 liquidated damages and 12% per annum interest thereon, shall be immediately due, together with
 4 any additional attorneys' fees and costs as referenced herein.

5 (b) A Writ of Execution may be obtained against Defendants/Guarantors
 6 without further notice, in the amount of the unpaid balance, plus any additional amounts under the
 7 terms herein, upon declaration by a duly authorized representative of the Plaintiffs setting forth
 8 any payment theretofore made by or on behalf of Defendants/Guarantors and the balance due and
 9 owing as of the date of default. Defendants/Guarantors specifically consent to the authority of a
 10 Magistrate Judge for all proceedings, including, but not limited to, Plaintiffs' obtaining a Writ of
 11 Execution herein.

12 (c) Defendants/Guarantors waive any notice of Plaintiffs' Request for Entry of
 13 Judgment or hearing thereon, and of Plaintiffs' Request for a Writ of Execution, and expressly
 14 waive all rights to stay of execution and appeal. The declaration or affidavit of a duly authorized
 15 representative of Plaintiffs as to the balance due and owing as of the date of default shall be
 16 sufficient to secure the issuance of a Writ of Execution, without notice to Defendants/Guarantors.

17 (d) Defendants/Guarantors shall pay all additional attorneys' fees and costs
 18 incurred by Plaintiffs in connection with collection and allocation of the amounts owed by
 19 Defendants/Guarantors to Plaintiffs under this Stipulation, regardless of whether a default occurs
 20 herein.

21 12. Any failure on the part of the Plaintiffs to take any action against
 22 Defendants/Guarantors as provided herein in the event of any breach of the provisions of this
 23 Stipulation shall not be deemed a waiver of any subsequent breach by the Defendants/Guarantors
 24 of any provisions herein.

25 13. In the event of the filing of a bankruptcy petition by the Defendants/Guarantors, the
 26 parties agree that any payments made pursuant to the terms of this Judgment, shall be deemed to
 27 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)
 28

1 and shall not be claimed by Defendants/Guarantors as a preference under 11 U.S.C. Section 547 or
 2 otherwise. Defendants/Guarantors nevertheless represents that no bankruptcy filing is anticipated.

3 14. Should any provision of this Stipulation be declared or determined by any court of
 4 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
 5 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
 6 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
 7 Stipulation.

8 15. This Stipulation is limited to the agreement between the parties with respect to the
 9 delinquent contributions and related sums enumerated herein, owed by Defendants/Guarantors to
 10 the Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
 11 Defendants/Guarantors acknowledge that the Plaintiffs expressly reserve their right to pursue
 12 withdrawal liability claims, if any, against Defendants/Guarantors as provided by the Plaintiffs'
 13 Plan Documents, Trust Agreements incorporated into their Collective Bargaining Agreement, and
 14 the law.

15 16. This Stipulation contains all of the terms agreed by the parties and no other
 16 agreements have been made. Any changes to this Stipulation shall be effective only if made in
 17 writing and signed by all parties hereto.

18 17. This Stipulation may be executed in any number of counterparts and by facsimile,
 19 each of which shall be deemed an original and all of which shall constitute the same instrument.

20 18. The parties agree that the Court shall retain jurisdiction of this matter until this
 21 Judgment is satisfied.

22 19. Defendants and Guarantors each represent and warrant that they have had the
 23 opportunity to be or have been represented by counsel of their own choosing in connection with
 24 entering this Stipulation under the terms and conditions set forth herein, that they have read this

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1 Agreement with case and are fully aware of and represent that they enter into this Stipulation
2 voluntarily and without duress.

3 Dated: December 29, 2009

JWT GENERAL ENGINEERING, INC.

4
5 By: /S/Christine Margaret Jones
Christine Margaret Jones, RMO

6 Dated: December 29, 2009

**PERFORMANCE COMPACTION aka
PERFORMANCE COMPACTION RENTALS**

7
8 By: /S/Bart Kennon Jones
Bart Kennon Jones, Owner/President

9
10 Dated: December 29, 2009

BART KENNON JONES

11
12 /S/Bart Kennon Jones
Individually, as Personal Guarantor

13
14 Dated: December ___, 2009

CHRISTINE MARGARET JONES

15
16 /S/Christine Margaret Jones
Individually, as Personal Guarantor

17 Dated: January 11, 2010

OPERATING ENGINEERS TRUST FUNDS

18
19 By: /S/Wayne McBride
Wayne McBride, Collections Manager

20
21 Dated: January 11, 2010

**SALTZMAN AND JOHNSON LAW
CORPORATION**

22
23 By: /Michele R. Stafford
Michele R. Stafford
Attorneys for Plaintiffs

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25 IT IS SO ORDERED

26 Dated: 1/12/10, 20__

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UNITED STATES DISTRICT COURT JUDGE